IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 22804 of 2004

Between:

C.A.M. High School, Nellore, Molapet, Nellore,

rep by its Corresondent Y.T. Mithra

..... PETITIONER

AND

1 Govt. of A.P. rep by Secretary, Education (COSE Department),

Hyderabad.
2 Commissioner and Director of School Education, Hyderabad.
3 Regional Joint Director of School Education, Guntur.
4 The District Educational Officer, Nellore.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the memo No. 12080/COSE/AC 2004-4 dt. 20-10-2004 issued by the 1st respondent has not application to fill up the aided vacancies in the petitioner school in the light of the proceedings Rc.No. 4286/A5/2004-1 dt. 22-9-2004 issued by the 3rd respondent by issuing appropriate writ of mandamus or direction and pass such other order or orders.

Counsel for the Petitioner: MR.M.V.S.SURESH KUMAR

Counsel for the Respondent Nos.1 to 4: GP FOR SCHOOL EDUCATION

The Court at the stage of admission made the following:

ORDER:

The present writ petition is filed to declare the memo No.12080/COSE/AC 2004-4 dated 20.10.2004, issued by the

1st respondent, has no application to fill up the aided vacancies in the petitioner school, in the light of the proceedings in
Rc.No.4286/A5/2004-1, dated 22.09.2004.

The petitioner school made a proposal to the District Educational Officer, Nellore, seeking permission to fill up the vacant posts. The Deputy Education Officer, Nellore in his proceedings dated 16.08.2004, sent a report to the District Educational Officer, who in turn recommended to the Regional Joint Director of School Education vide his letter dated 17.09.2004. The Regional Joint Director of School Education, in his proceedings dated 22.09.2004, granted permission to the petitioner school to fill up eight aided posts by following due procedure. There upon the petitioner school addressed a letter to the District Employment Officer, Nellore, requesting him to send a panel of names for each category of posts, and also requested the District Educational officer to depute a departmental nominee. In the meanwhile, the Government issued a memo No.12080/COSE/A2/2004-4, dated 22.10.2004, imposing a ban. Challenging the same, the present writ petition is filed.

A detailed counter affidavit has been filed by the 4th respondent-District Educational Officer, admitting the proposals sent by the petitioner school and also admitting the proposals forwarded to the Deputy Educational Officer, who in turn forwarded the

same to the District Educational Officer, and ultimately the Regional Joint Director of School Education accorded permission for filling up of eight teaching posts. It is further stated that the contention of the petitioner that the date of interview i.e. 14.12.2004 was fixed in pursuance of the permission granted by the Regional Joint Director of School Education is not correct and there is violation of Sub-Rule (5) of Rule (12) of G.O.Ms.No.1, Education, dated 1.1.1994. The petitioner without following the said rule fixed the date of selection on 14.12.2004 on his own accord. The memo No.12080/COSE/A2/2004-3, issued by the

1st respondent, dated 18.10.2004, was communicated to all the correspondents of aided institutions. The Government has power to issue any modified or any other orders deemed fit on any aspect related. Therefore, it is imminent to implement the orders of the Government in respect of the petitioner institution, even though permission was granted by the 3rd respondent. In pursuance of the interim directions, the Deputy Educational Officer was appointed as District Educational Officer's nominee to proceed with the selection as scheduled by the petitioner. Hence the writ petition is devoid of merit and prays to dismiss the same.

It is contended by the learned counsel for the petitioner that since the Regional Joint Director of School Education has given permission prior to the ban imposed by the Government, the ban has no application for filling up the posts, and in similar circumstances, this Court passed orders in W.P.No.22188/2004 dated 09.12.2004.

On the other hand, the learned Government Pleader for School Education contended that since the Government has not given permission and since there is a ban, the petitioner could not proceed with filling up of posts.

The factual matrix is not in dispute. As per the proceedings of the Regional Joint Director of School Education, dated 22.09.2004, the petitioner school was given permission to fill up certain aided posts subject to pending outcome of judgment of the Honourable Supreme Court of India in SLP, filed against the orders in W.A.No.1519/1999. It is also informed to the petitioner school that the selection of approval will be made under sub-rule (8) and (9) of Rule-12 of G.O.Ms.No.1, Education, dated 01.01.1994 and also as per the orders in G.O.Ms.No.100, Education (PS-1) Department, dated 16.08.2001.

A specific contention has been raised in the counter affidavit, filed by the 4th

respondent, that the date of interview, fixed as 14.12.2004, in pursuance of the permission granted by the Regional Joint Director of School Education, is not correct, and as per the Sub-rule (5) of Rule-12 of G.O.Ms.No.1, Education, dated 01.01.1994, it is for the Educational agency to fix the selection process in consultation with the District Educational Officer or his nominee. But in pursuance of directions issued by this Court, the interviews were conducted, wherein the District Educational Officer's nominee was participated in the selection process. Therefore, it cannot be said that there is violation to the Sub-rule (5) of Rule-12 of G.O.Ms.No.1, Education, dated 01.01.1994. Now the question to be answered in this writ petition is whether the Government memo dated 20.10.2004 bearing No.12080/COSE/A2/2004-4 is applicable to the present facts of the case.

The Government passed a memo, where under Minutes of the High Level Committee meeting has placed the following orders:

> "No new posts of Grant-in-Aid would be created and the existing vacancies will also not be filled up, except what has been specifically authorized since there is a general ban on recruitment except for the posts for which permission was specifically granted by the Government."

According to the learned Government Pleader for School Education, as no permission was granted by the Government, the posts in the petitioner School could not be filled up in view of the general ban. On the other hand, according to the learned counsel for the petitioner, since the 3rd respondent has given permission prior to this memo came into effect, the memo has no application.

In this case, admittedly the 3rd respondent-Regional Joint Director of School Education has given approval on 22.09.2004 for filling up the posts, of course subject to pending outcome of judgment of the Honourable Supreme Court of India in SLP, filed against the orders in W.A.No.1519/1999. It is not disputed before this Court that the

3rd respondent-Regional Joint Director of School Education is the competent authority to accord permission to fill up the posts. The ban would come into effect only from the date of 20.10.2004, where no new posts of grant-in-aid would be created and also the existing vacancies would not be filled up.

In my considered opinion the impugned memo will come into prospective operation. As per this impugned memo, ban applies only for creation of new posts or filling up

of existing vacancies after 20.10.2004, but not applies where the competent authority gave a prior permission. Therefore, this Court is unable to accept the contentions raised by the learned Government Pleader for School Education that there is ban for filling up of posts. Since the ban imposed by the Government in its memo dated 20.10.2004, will apply for filling up of posts in future, but not to the posts where sanction has been accorded by the competent authority.

Therefore, the Writ Petition is allowed, holding that the Government Memo dated 20.10.2004 has no application, and the petitioner school can proceed further in filling up of posts, in accordance with law. No order as to costs.

Dated: 09.03.2005

Dsr

ASSISTANT REGISTRAR

To:

1. The Secretary,

Government of Andhra Pradesh,

Education (COSE Department),

Hyderabad

2. The Commissioner and Director of

School Education, Hyderabad

3. The Regional Joint Director of

School Education, Guntur

4. The District Educational Officer

Nellore

5. Two CCs to the Government Pleader

for School Education, High Court Buildings,

Hyderabad (OUT)

6. Two CD copies

*Form-NIC-OGS/WP{**RLD**}*